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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-2049

RUSSELL R. CARTER, APPELLANT,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before PIETSCH, *Judge*.

MEMORANDUM DECISION

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

PIETSCH, *Judge*: Russell R. Carter appeals through counsel a March 30, 2015, Board of Veterans' Appeals (Board) decision that found proper the reduction of his disability rating for residuals for prostate cancer from 100% to 0%. This appeal is timely and the Court has jurisdiction to review the Board's decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate as the issue is of "relative simplicity" and "the outcome is not reasonably debatable." *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons that follow, the Court will affirm the Board's March 30, 2015, decision.

I. FACTS

Mr. Carter served on active duty in the U.S. Air Force from June 1970 to March 1974, including service in Vietnam. In February 2011, a VA regional office (RO) granted entitlement to VA benefits for prostate cancer and assigned a 100% disability rating, with a note that 6 months following the completion of treatment, his condition would be reevaluated.

A July 2011 treatment note indicated that Mr. Carter's blood pressure was 128/76, and that he was currently taking Lisinopril 20mg and Amlodipine 10mg daily. In October 2011, Mr. Carter

underwent a VA examination for his prostate cancer, at which the examiner noted that he had undergone radiation therapy and his prostate cancer was in remission. The examiner stated that Mr. Carter did not have any voiding dysfunction or symptomatic urinary tract or kidney infections.

A November 2011 treatment note indicated Mr. Carter's blood pressure was 150/89 and uncontrolled. At that time, his current medications included Benazepril 40mg, Hydrochlorothiazide 25mg, and Lisinopril 20mg daily. That same month, the RO issued a decision proposing to reduce Mr. Carter's disability rating for prostate cancer to 0%. In March 2012, the RO reduced his disability rating, and he disagreed with that decision.

At a June 2012 treatment appointment, Mr. Carter reported an at-home blood pressure reading of 140/100. His blood pressure at the appointment was noted to be 150/94 and uncontrolled. A month later, his blood pressure was 148/96. The RO maintained the rating reduction in an August 2012 decision.

On March 20, 2015, the Board issued the decision on appeal. In that decision, the Board found that the RO had complied with the procedural requirements for reducing a disability rating. The Board also discussed the medical evidence, noting that there was no reoccurrence or metastasis, voiding dysfunction, or renal dysfunction. The Board noted that Mr. Carter had been diagnosed with hypertension, as a residual of prostate cancer, but found that his condition did not warrant a 10% disability rating under 38 C.F.R. § 4.114 (2016), Diagnostic Code (DC) 7101.

On appeal, Mr. Carter argues that the Board erred by not awarding him a compensable disability rating for residuals of prostate cancer because his hypertension entitles him to at least a 10% disability rating. He also argues that the Board failed to provide adequate reasons or bases explaining why his hypertension did not warrant a compensable disability rating.

In response, the Secretary argues that the Board adequately addressed the evidence regarding Mr. Carter's hypertension and properly found that he was not entitled to a compensable disability rating for that condition. The Secretary states that the Board's reasons or bases are sufficient.

II. ANALYSIS

For VA purposes, "hypertension means that the diastolic blood pressure is predominantly 90mm. or greater." 38 C.F.R. § 4.104, Diagnostic Code (DC) 7101, Note (1) (2016). For a 10%

disability rating for hypertension, a veteran must have a "[d]iastolic pressure predominantly 100 or more, or[] systolic pressure predominantly 160 or more." *Id.* A 20% disability rating is warranted when the veteran has a "[d]iastolic pressure predominantly 110 or more, or[] systolic pressure predominantly 200 or more." *Id.* As with all its determinations on material issues of fact and law, the Board's decision must contain a written statement of the reasons or bases for its findings and conclusions that is understandable and facilitates review by this Court. 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995).

Mr. Carter argues that the Board erred in denying him entitlement to a compensable disability rating for hypertension by failing to discuss his specific blood pressure readings, which he states indicate that his diastolic blood pressure is "frequently very close to 100." Appellant's Brief at 5. Although the Board did not specifically list Mr. Carter's blood pressure readings, it did discuss the medical evidence, noting that he required continuous medication for hypertension and finding that the medical evidence did not show that he met the criteria for a compensable rating under DC 7101. Indeed, Mr. Carter acknowledges this, stating that the medical evidence showed only that his diastolic blood pressure readings were very close to 100. The fact that his blood pressure readings are close to the level to be compensable does not make them compensable. Mr. Carter has not pointed to any evidence that the Board failed to consider showing he actually met the criteria for a compensable rating under DC 7101. Because the Board's finding is supported by the record and adequately explained, the Court finds no error in the decision. *See Allday*, 7 Vet.App. at 527.

Mr. Carter also argues that the Board misinterpreted the law by considering the ameliorative effects of his medication when assigning a disability rating, which he states is not permitted by DC 7101. The Court recently considered this argument in *McCarroll*, finding that "DC 7101 demonstrates that this diagnostic code, read as a whole, contemplates the effects of medication in assigning a disability rating for hypertension." *McCarroll v. McDonald*, ___ Vet.App. ___, ___, No. 14-2345, 2016 WL 6575247 at *4 (Nov. 7, 2016). As discussed above, the Board acknowledged that Mr. Carter required continuous medication for his hypertension and found that, with that medication, his blood pressure does not meet the criteria for a compensable disability rating. Because the Board was permitted to consider Mr. Carter's condition based on his medication, the Court must reject his argument. *Id.* Similarly, because Mr. Carter's argument that the Board was required to consider

obtaining a medical opinion to discount the effects of his medication is based on his erroneous reading of DC 7101, the Court rejects that argument as well.

III. CONCLUSION

Upon consideration of the foregoing analysis, the record of proceedings before the Court, and the parties' pleadings, the March 30, 2015, Board decision is AFFIRMED.

DATED: November 30, 2016

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